

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 283 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

2 to 5 No

COMMISSIONER OF INCOME TAX

Versus

ASHOKA MILLS LTD.,

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner
NOTICE SERVED BY RPAD

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 07/04/99

ORAL JUDGEMENT (per A.R. Dave, J.)

At the instance of the revenue, the Income-tax Appellate Tribunal, Ahmedabad Bench "A" has referred to this Court the following three questions of law for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the Act).

1. "Whether, on the facts and in the circumstances of the case, the reimbursement of medical expenses to Mg. Directors could not be considered as disallowance for the purpose of computation u/s 40(c) of the I.T. Act, 1961?
2. Whether the Appellate Tribunal has been right in law in holding that for the purposes of Sec. 40(c) the payment of premium of personal accident insurance of the Managing Director could not be treated as disallowance while computing the same u/s 40(c) of the I.T. Act, 1961?
3. Whether the Appellate Tribunal is right in law in holding that for the purpose of Sec. 40A(5) the amount of cash payment of house rent allowance amounting to Rs. 13283/- paid to the employees did not form part of salary and is not including therefor for the purpose of determining the disallowance under the said section?"

2. Learned Advocate Shri B.B. Naik has appeared for the applicant whereas nobody has appeared for the respondent assessee, though served.

3. Learned Advocate Shri Naik has fairly submitted that the questions referred to this Court are no more res integra.

4. So far question No. 1 is concerned, it pertains to reimbursement of medical expenses to the Managing Directors of the assessee. The said expenditure was held to be payment as remuneration or benefit to the directors and was disallowed under the provisions of sec. 40(c) of the Act by the ITO. In the appeal, the CIT (Appeals) confirmed the order of the ITO but the Tribunal held that the said amount could not be treated as a benefit or amenity within the meaning of sec. 40(c) of the Act. This Court, in case of Gujarat Steel Tubes v. CIT, 210 ITR 358, has already opined that reimbursement of medical expenses to the directors is to be treated as remuneration or benefit to the director within the meaning of sec. 40(c)(i) of the Act and therefore Question No. 1 is answered in negative, i.e., against the assessee and in favour of the revenue.

5. So far as question No.2 is concerned, it pertains to payment of premium for the personal accident insurance of the Managing Directors by the assessee company. The ITO treated the said amount as perquisite and disallowed

the same as provided under the provisions of sec. 40(c) of the Act. In appeal, the CIT (Appeals) confirmed the order of the ITO but the appellate tribunal held that the premium paid should not have been treated as perquisites and it should not have been disallowed. The said question has also been now decided in the case of Ambica Mills Ltd. v. CIT, 231 ITR 583. It has been held in the said case that payment of premium for personal accident insurance of the managing director should be treated as part of remuneration while computing disallowance under the provisions of sec. 40(c) of the Act. In view of the said judgment, we answer Question No.2 in negative i.e. in favour of the revenue and against the assessee.

6. So far as question No.3 is concerned, it pertains to disallowance of cash payment of house rent allowance amounting to Rs. 13283/- to the employees under the provisions of Sec. 40A(5) of the Act. The question referred to hereinabove has also been now decided in the case of Commissioner of Income-tax v. Vickers Sperry of India Ltd., 216 ITR 861 (Bombay). We are in agreement with the view expressed in the said case that such an expenditure cannot be disallowed and following the said judgment, we decide the said question in affirmative, i.e., against the revenue and in favour of the assessee.

7. The reference is thus disposed of as stated hereinabove with no order as to costs.

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